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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,882	09/30/2003	Robert Holt	180825.00047	9227
26710 7590 05/07/2010 QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497				
EXAMINER				
MISKA, VIT W				
ART UNIT		PAPER NUMBER		
2833				
NOTIFICATION DATE		DELIVERY MODE		
05/07/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pat-dept@quarles.com

Office Action Summary

Application No.

10/674,882

Applicant(s)

HOLT ET AL.

Examiner

Vit W. Miska

Art Unit

2833

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ko et al (7294379) in view of Frommer et al (5947369).
2. With respect to claims 1-4, 8-9 and 11, the reference discloses a time indicator 100 in Figs. 1 and 7 that provides a color indicia after a predetermined period of time has passed after activation (see col. 19, line 30), comprising: a substrate 102 having an upper surface and a lower surface (top and bottom surfaces thereof) and a first portion adjacent 106 and a second portion adjacent 104 joined at a fold line 114, an adhesive 104 coating the upper surface of at least the second portion of the substrate (see col. 19, line 43) , a first reactant 106 adhered to the upper surface of the first portion of the

substrate (col. 19, lines 47-49 "activator compound"); a second reactant 106 adhered to the upper surface of the second portion of the substrate (see col. 19, lines 46-47 "acid – based indicator"); whereby when the first portion is folded along the fold line so that the upper surfaces of the substrate contact each other and the first reactant and second reactant contact each other to activate the indicator and to provide the color indicia after the predetermined period of time after activation passes (col. 20, lines 40-44), wherein the first reactant is a printed indicia (col. 6, line 54) and the second reactant is the adhesive 104, wherein the substrate is transparent (col. 6, line 40), wherein the color indicia can be viewed through the lower surface of the substrate (col. 6, lines 40-41). With respect to claim 10, the second reactant is a chemical residue (activator 106 causes chemical reaction, col. 19, line 48).

3. Ko et al do not disclose "the first portion being smaller in area than the second portion" such that "a portion of the adhesive on the second portion remains exposed" when the two portions are folded. However, Frommer disclose a time indicating badge in Figs. 2-3 with first portion 54 and second portion 52 folded for activation of the timer, first portion 54 being smaller than portion 52 (Fig. 3) and adhesive 62 on substrate 52, 54 for securing the folded sections. As shown in Fig. 3, when portions 52, 54 are folded, portion 58c with adhesive 62 remains exposed for securing to the badge to an item (upon further folding of portion 58c).

4. At col. 5, lines 49-50 patentees suggest that the portions of the badge shown in Fig. 2 may be “foldable at several crease lines and sealed”. A reasonable interpretation of this passage and the detailed description of Fig. 2 at col. 8, lines 3-36 would suggest to one ordinary skill in the art that an adhesive patch (66 in Fig. 2) covers electrolyte fabric 60 and attaches the same to part 58a of portion 54 and that an adhesive (labeled 62 around the edges of the card in Fig. 2) seals the two portions 52, 54 of the label.

5. It would be obvious for one of ordinary skill in the art, having both references, to make portions of substrate 102 adjacent 106 smaller than portion 102 adjacent adhesive 104 in Ko et al such that, when folded, a portion of adhesive 104 remains exposed for providing a surface for attachment to another item, as taught by Frommer et al.

Response to Arguments

6. Applicant's comments have been given careful consideration but have not been found persuasive. Applicant notes that the Frommer et al reference appears to contain some errors in labeling Fig. 2. Specifically, an “adhesive patch 62” is referred to in the specification. “adhesive patch 62”, applicant suggests, refers to patch 66 in Fig. 2, which attaches electrolyte fabric 60 to label portion 54. Applicant's interpretation of the

description of Fig. 2 is not in dispute, as Fig. 2 clearly shows a patch over fabric 60. However, the application of the reference as set forth pars. 2-5, above, does not rely on the disclosure of adhesive patch 66. Rather, the Frommer et al reference is employed for a teaching of the folding of a timing label and providing an exposed adhesive portion. It is apparent from the cited passages in the reference that the label is folded and sealed, apparently by adhesive 62 shown around the label periphery. No other purpose for element 62 appears disclosed, other than that of the "sealing" feature noted.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 571-272-2108. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Renee Luebke can be reached on 571-272-2009. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vit W. Miska/
Primary Examiner, Art Unit 2833